

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of SBC California  
(U 1001 C) for a Surcharge and a Balancing  
Account to Recover Undergrounding Costs in the  
City of San Diego.

Application 05-03-005  
(Filed March 3, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING FINDING  
UTILITY CONSUMERS' ACTION NETWORK ELIGIBLE TO CLAIM  
INTERVENOR COMPENSATION**

This ruling finds Utility Consumers' Action Network (UCAN) eligible for an award of intervenor compensation pursuant to Public Utilities Code Sections 1801-1812.<sup>1</sup>

**Intervenor Compensation Requirements**

The intervenor compensation program set forth in the Public Utilities Code allows public utility customers to receive compensation for their participation in Commission proceedings. To receive an award, a customer must make a substantial contribution to the adoption of the Commission's order or decision and demonstrate that participation without an award would impose a significant financial hardship.<sup>2</sup>

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<sup>1</sup> All citations are to the Public Utilities Code.

<sup>2</sup> Section 1803.

Section 1804 requires a customer who intends to seek an award to file and serve within 30 days after the prehearing conference a notice of intent to claim compensation (NOI). Section 1804(a) and the Commission's Rules of Practice and Procedure, Rule 76.74, allow the Administrative Law Judge (ALJ) to establish a deadline for filing NOIs when no prehearing conference is scheduled. The NOI must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation the customer expects to request. The customer's showing of significant financial hardship may be included with the NOI or may be included with the request for award after the Commission's final decision in the proceeding.

If the NOI includes the customer's financial hardship showing, the ALJ in consultation with the Assigned Commissioner must issue within 30 days a preliminary ruling addressing whether the customer will be eligible for an award under the intervenor compensation program.<sup>3</sup> To determine eligibility, two questions must be addressed: whether the intervenor is a "customer" as defined in Section 1802(b), and whether participation will present a significant financial hardship.<sup>4</sup> The ALJ's ruling should also identify which type of customer the intervenor is: a participant representing consumers; a representative authorized by a customer; or a representative of a group or organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers. A finding of significant financial hardship creates a rebuttable

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<sup>3</sup> Section 1804(b)(1).

<sup>4</sup> Decision (D.) 98-04-059.

presumption of eligibility in other Commission proceedings commencing within one year of the date of that finding.

### **The Proceeding**

On March 3, 2005, SBC California (SBC) filed this application seeking Commission authorization for a surcharge and balancing account to track and recover its costs for undergrounding its facilities in San Diego. SBC stated that the City of San Diego supported expedited undergrounding of overhead wires in San Diego and the proposed surcharge to San Diego customers.

UCAN, the Office of Ratepayer Advocates (ORA), and Telscape Communications, Inc., filed separate protests, and XO Communications, Inc., Mpower Communications Corp., and the California Association of Competitive Telephone Companies filed a joint protest. All protestants opposed granting the relief requested. UCAN and ORA contended that the proposed surcharge would violate the New Regulatory Framework under which the Commission regulates SBC, and the joint protestants argued that the surcharge, as applied to competitive local exchange carriers, would also violate federal law.

The parties participated in a prehearing conference on May 24, 2005, where a schedule for motions to dismiss and responses was set.

### **UCAN's NOI**

On June 21, 2005, UCAN timely filed its NOI. UCAN stated that it has a long and successful history of representing residential and small business customers before the Commission. UCAN submitted its articles of incorporation in docket R.98-12-015, and has repeatedly been found to be a "customer" as defined in Section 1802(b), see e.g., August 21, 2000, ruling in R.00-02-004. UCAN stated that it intends to address issues relating to the fairness of the

proposed cost recovery mechanism and the prudence of costs for which SBC is seeking recovery.

UCAN has included a statement of the nature and extent of its planned participation (Section 1804(a)(2)(A)(i)), and an itemized estimate of the compensation it expects to request (Section 1804(a)(2)(A)(ii)). The position UCAN intends to advocate falls within the scope of this phase of the proceeding.

UCAN's itemized estimate indicates that it will devote approximately 70 hours of attorney time and \$20,000 worth of expert time to this proceeding, with total estimated expenses of \$38,000.

UCAN enjoys a rebuttable presumption of eligibility to claim compensation in this proceeding by virtue of having recently received a finding of significant financial hardship as a customer of the third type, *i.e.*, a formally organized group authorized pursuant to its articles of incorporation to represent the views of residential customers. That presumption arose from an ALJ's finding on June 28, 2005, in a ruling in A.05-02-019.

### **Finding of Eligibility to Request Compensation**

No party opposed UCAN's NOI. After consulting with the assigned Commissioner, I find that UCAN has met the NOI filing requirements of Section 1804(a) and is eligible to seek an award under the intervenor compensation program. This finding of eligibility to claim compensation in no way assures UCAN will subsequently receive an award. The determination of

what compensation, if any, UCAN will receive come only after UCAN files its request pursuant to Section 1804(c).

**IT IS SO RULED.**

Dated July 1, 2005, at San Francisco, California.

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Finding Utility Consumers' Action Network Eligible to Claim Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated July 1, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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